

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the Burlington Northern Santa Fe Railway Company for authority to construct, operate and maintain a new at grade crossing of Napa Street, CPUC Crossing No. 002-93.90-C, D.O.T. No. 924596T, County of San Bernardino.

Application 04-04-032  
(Filed April 26, 2004)

**O P I N I O N****Summary**

This decision grants Burlington Northern Santa Fe Railway Company's (BNSF) request for authority to construct a proposed spur track at-grade highway-rail crossing (crossing) across Napa Street, to be referred to as CPUC Crossing No. 002-93.90-C, Federal Department of Transportation Number 924596T in San Bernardino County (County).

The original application contained a typographical error in the caption of the application. The crossing was described correctly but the application caption referred to as the crossing number as "CPUC Crossing No. 992-93.90-C." The correct number is "CPUC Crossing No. 002-93.90-C." The caption of the proceeding is corrected accordingly.

**Discussion**

BNSF proposes to construct a spur track crossing across Napa Street to provide rail service to light industrial, wholesale and retail businesses, offices and commercial developments. The development will include transportation-

related commercial and industrial businesses, a rail served industrial development and a 1,276 space truck plaza with related facilities.

Grade-separation is not practicable due to low train volumes and Napa Street is a collector road with combined average daily traffic volume of 3,953. Consequently, representatives from the County, BNSF and Commission's Consumers Protection and Safety Division – Rail Crossings Engineering Section (RCES) staff held a diagnostic meeting and determined that the warning devices on both westbound and eastbound vehicular traffic on Napa Street will consist of two Standard No. 9-As (flashing light signals with automatic type signals with additional flashing lights on a cantilevered mast arm, as defined in General Order (GO) 75-C). Public safety also requires that County place on all crossing approaches railroad crossing pavement markings (RXR) with Highway-Rail Grade Crossing Advance Warning (W10-1) signs.

County is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended in 1982, as stated in Public Resources Code Section 21000 et seq. On October 6, 1998, County prepared a Draft Environmental Impact Report (EIR), assigned State Clearinghouse (SCH) Number 97091010. The Draft EIR describes the existing environmental conditions on the project site, the project's potential environmental effects and mitigation measures to reduce or avoid significant adverse impacts. The Draft EIR was circulated for public review and comment from October 17, 1998 to December 3, 1998. On February 17, 1999, County completed the Final EIR that summarized the project description, revisions to EIR, responses to comments, and the Mitigation Monitoring and Compliance Program.

The Commission is a responsible agency for this project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's EIR or Negative Declaration prior to acting upon or approving the project (CEQA Guideline Section 15050 (b)). The specific activities that a responsible agency must conduct are contained in CEQA Guideline Section 15096.

We reviewed the lead agency's environmental documents and found them adequate for our decision-making purposes. These documents include the Draft and Final EIRs for the Kaiser Commerce Center Specific Plan (SCH 97091010). In considering this document, we note that Draft and Final EIRs developed and evaluated a range of alternatives as well as "No Build Alternative" and "No Project Alternative." The Draft and Final EIRs included an analysis of potential environmental impacts related to the project and alternatives related to traffic, noise, air quality, hazardous material, light and glare. Safety, transportation and noise are within the scope of the Commission's permitting process.

Potential safety impact related to unsafe driving conditions on Interstate 10 or adjacent roads near the project site is glare as a result of lighting and signage associated with truck plaza development. Adopted mitigation measures include a comprehensive lighting plan prepared prior to or in conjunction with the submittal of building plans to the County. Lighting sources should be shielded, diffused or indirect to avoid glare to pedestrians and motorists. Lighting fixtures should be selected and located to confine the area of illumination to within site boundaries.

Potential transportation impacts are related to traffic generated by future development in the project area which would increase the number of

intersections that operate at peak hour levels of service. To mitigate the potential impacts to less-than-significant levels, an analysis will be prepared for each subsequent development proposal that identifies the prorated costs for all off-site, specific plan roadway improvements related to that project. Each subsequent development project will be responsible for payment of the identified prorated traffic impact fee.

Potential noise impacts relate the new land uses in the project area, with noise levels in the 75 to 80 dB. Noise levels in outdoor patios or recreational areas should not exceed 65 dB. In order to meet the noise levels below 65 dB, outdoor activity areas will need to be located away from major noise sources and shielded by buildings and structures.

We believe that the County adopted feasible mitigation measures which will avoid or substantially reduce all environmental impacts to less-than-significant levels. We adopt these mitigation measures for purposes of our approval.

The Application is in compliance with the Commission's filing requirements, including Rule 40 of Rules of Practice and Procedure, which relates to the construction of a railroad track across a public highway. A site map and detailed drawings of the proposed spur track crossing across the existing Napa Street are shown in Appendices A and B attached to the order.

In Resolution ALJ 176-3133, dated May 6, 2004, and published in the Commission Daily Calendar on May 7, 2004, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. Since no protests were filed, this preliminary determination remains correct. Given these developments, it is not necessary to revise the preliminary determinations made in Resolution ALJ 176-3133.

This Application is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), we waive the otherwise applicable 30-day period for public review and comment.

**Assignment of Proceeding**

Richard Clark is the assigned Examiner in the proceeding.

**Findings of Fact**

1. The Commission published Notice of Application 04-04-032 in the Commission Daily Calendar on April 29, 2004. There are no unresolved matters or protests; a public hearing is not necessary.
2. BNSF requests authority, under Public Utilities Code Sections 1201-1205, to construct a proposed spur track at-grade across Napa Street in San Bernardino County.
3. Construction of the proposed spur track at-grade across Napa Street is necessary to provide rail service to light industrial, wholesale and retail businesses, offices, and commercial developments.
4. A grade-separation at Napa Street is not practicable due to low train volumes and Napa Street being a collector road with daily vehicular count of 3,953.
5. Public safety requires that warning devices at Napa Street crossing be two Standard No. 9-As (flashing light signals with automatic gates with additional flashing lights on a cantilevered mast arm, as defined in GO 75-C) for both westbound and eastbound vehicular traffic on Napa Street.
6. County is the lead agency for this project under CEQA, as amended. County prepared Draft and Final EIRs.

7. The Commission is a responsible agency for this project, and has reviewed and considered the lead agency's Draft and Final EIRs. We find these documents to be adequate for our decision-making purposes.

8. Safety, transportation and noise are within the scope of the Commission's permitting process.

9. For the approved project, the lead agency identified environmental impacts related to safety, transportation and noise.

### **Conclusions of Law**

1. With respect to significant impacts from safety, transportation and noise, we find that the lead agency adopted feasible mitigation measures where possible to avoid or substantially lessen the environmental impacts to less-than-significant level. Therefore, we adopt these mitigations for purposes of our approval.

2. The Application is uncontested and a public hearing is not necessary.

3. The Application should be granted as set forth in the following order.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The caption of this proceeding is corrected to reflect the correct CPUC Crossing No. as "CPUC No. 002-93.90-C."

2. The Burlington Northern Santa Fe Railway Company (BNSF) is authorized to construct a proposed spur track at-grade highway-rail crossing (crossing) across Napa Street, identified as CPUC Crossing No. 002-93.90-C, Federal Department Of Transportation Number, 924596T, in San Bernardino County (County), at the location and substantially as shown by the plans attached to the Application and Appendices A and B of this order.

3. The warning devices at the crossing shall be two Standard No. 9-As (flashing light signals with automatic gates with additional flashing lights on a cantilevered mast arm, as defined in Commission General Order (GO) 75-C) for westbound and eastbound vehicular traffic on Napa Street.

4. County shall place on all crossing approaches railroad crossing pavement markings (RXR) with Highway-Rail Grade Crossing Advance Warning (W10-1) signs.

5. Clearances shall conform to GO 26-D. Walkways shall conform to GO 118.

6. Construction expense of the crossing and installation of the automatic warning devices shall be borne by BNSF.

7. Maintenance cost of the automatic warning devices shall also be borne by BNSF.

8. Construction of the crossing shall be in accordance with GO 72-B. Maintenance of the crossing surfaces shall also be in accordance with GO 72-B.

9. Construction plans of the crossing, approved by County, together with a copy of the agreement entered into between County and BNSF, shall be filed with the Commission's Consumers Protection and Safety Division- Rail Crossings Engineering Section (RCES) prior to commencing construction.

10. Within 30 days after completion of the work under this order, BNSF shall notify the RCES in writing by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), of the completion of the authorized work.

11. This authorization shall expire if not exercised within two years unless the Commission extends the time or the parties do not comply with the above conditions. The Commission may revoke or modify the authorization if public convenience, necessity or safety so require.

12. The application is granted as set forth above.



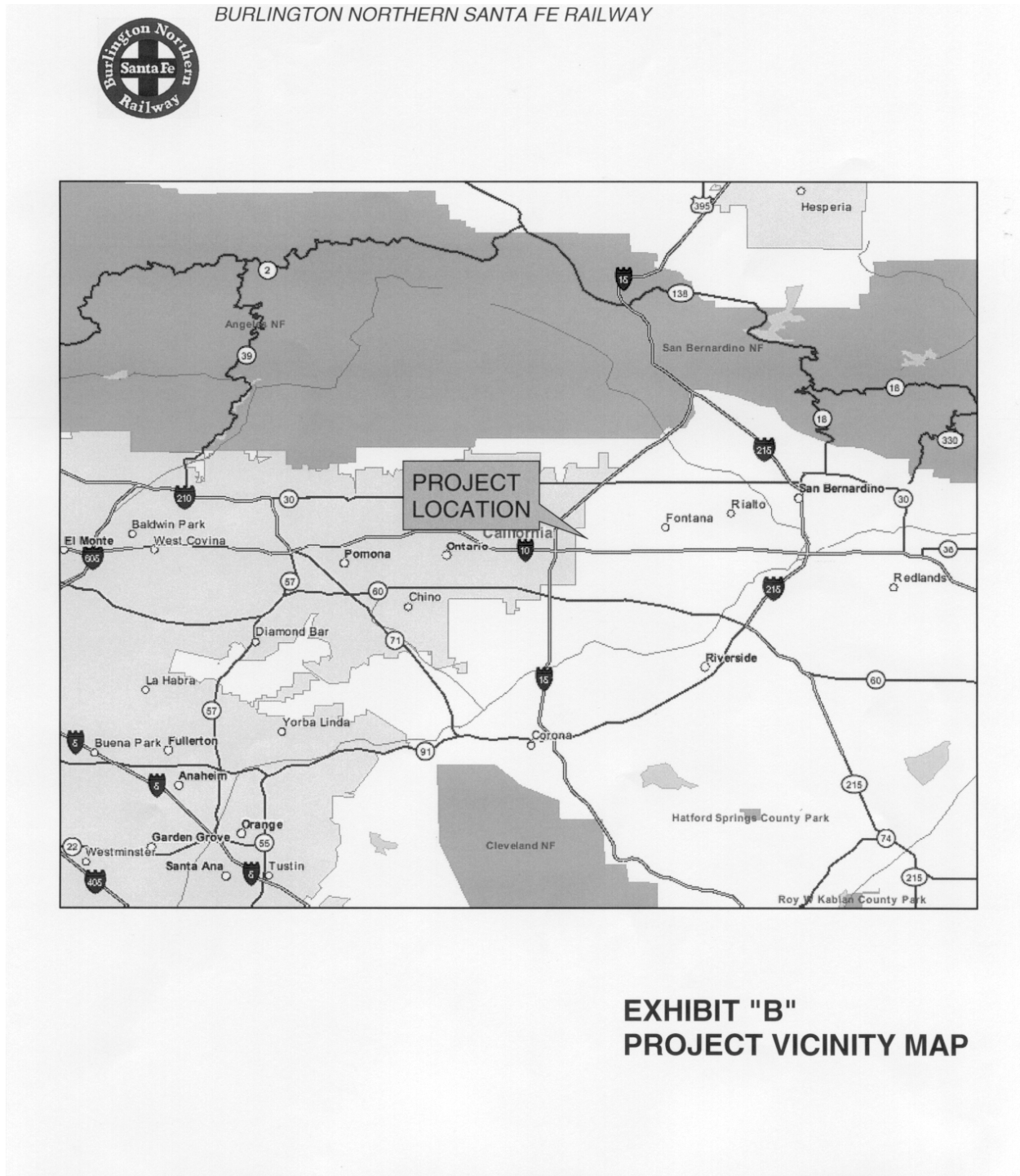
13. Application 04-04-032 is closed.

This order becomes effective 30 days from today.

Dated \_\_\_\_\_, at San Francisco, California

## APPENDIX A

## SITE MAP



## APPENDIX B

## PLAN

